

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 686 of 1990

with

CIVIL REVISION APPLICATION No 687 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUNWANTBHAI M GONDALIA

Versus

VM SAMTANI

Appearance:

1. Civil Revision Application No. 686 of 1990
MR DARSHAN M PARIKH for Petitioners
Mr.Kamal Mehta, Asst.
GOVERNMENT PLEADER for Respondent No. 1
2. Civil Revision ApplicationNo 687 of 1990
MR DARSHAN M PARIKH for Petitioners
Mr.Kamal Mehta, Asst.
GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 03/07/97

ORAL JUDGEMENT

1. These two CRAs are directed against the same or similar common judgment, dated 15.4.88 rendered by the Ld.City Civil Judge pursuant to report submitted by the Inspecting Officer (Court Fee, Ahmedabad, City Civil Court) , dated 11.4.88. The plaintiff as the General Secretary of Gujarat State Cooperation Department Cl.III Employees' Union instituted the suit against the State of Gujarat and three others challenging the legality and validity of the report of the Court Fee Inspector and consequently order of the Ld.City Civil Judge calling upon the plaintiffs to pay the deficit court fee. It appears that the State of Gujarat has issued common circular to the effect that those employees who have given a call for strike should be subjected to the orders of suspension in the case of permanent employees and those who were temporary should be terminated. It is such order of the State of Gujarat which was the subject matter of litigation and a representative union of the employees instituted the aforementioned two suits being CS Nos 182385 in CRA No.686/90 and No.1822/85 in CRA No.687/90. In the Court Fee Reference the Court while examining the plaint and the relief prayed for more particularly in 19A of the plaint , which reads as under:

"this Honourable Court will be pleased to issue a permanent injunction restraining the defendants, their servants, subordinates, agents, etc. from passing orders of suspension or termination and serving them upon any or all of the members of the plaintiff's Association,"---

found that permanent injunction restraining the State, its servants and agents both from passing order of suspension as well as order of termination and from serving the same upon any or all of the members of the Association was the relief claimed and, therefore, in fact the members of the union wanted their individual rights to be protected both against expected suspension and/or expected termination. On this reasoning the Court Fee Inspector found that the plaintiff was liable to pay the court fee of Rs.30/-per each member of the association and in view of the number of members ad-valorem court fee of Rs.83,010/-was payable in Civil Suit No.1823/85 and Rs.16,500/in Civil Suit No.1822/85. Said order of the Court Fee Inspector appears to have found favour with the Ld.City Civil Judge who has by his impugned order agreed with the objection taken by the Court Fee Inspector and has called upon the plaintiffs to

pay the deficit court fee. The Ld.City Civil Judge has also directed that on plaintiffs' failure to pay the deficit court fee, recovery certificate be issued and the amount be recovered from the plaintiffs. It is said order of the Ld.City Civil Judge which is under challenge before this court in these proceedings.

2. Mr.Mihir Thakore and Mr.Darshan Parikh appearing for petitioner-plaintiffs interalia contended that the order of the Ld.City Civil Judge confirming the objection of the Court Fee Inspector was not sustainable in the eye of law in view of the provisions of Order 7 Rule 11 C.P.Code which provides that the plaint shall be rejected where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requisite stamp paper within a time to be fixed by the court fails to do so. They submitted that therefore if the plaintiff fails to pay deficit court fee as determined, the consequences stipulated by Order 7 Rule 11 must necessarily follow. In this connection reliance is also placed upon the decision of his Lordship Justice M.P.Thakkar (as His Lordship then was) in the case of ASHWINKUKAR NARMADASHANKAR DAVE vs KRISHNACHANDRA NARMADASHANKAR DAVE reported in 19 GLR 892. In the context of aforesaid Order 7 Rule 11, when the plaintiff fails to pay correct court fee, His Lordship took the view that there is no coercive power in the court to oblige a litigant to correct the valuation and pay court fees on the basis of the holding of the court that the relief is undervalued. In this connection his Lordship made following pertinent observations on which reliance is placed by the advocates for the petitioners:

"It is therefore clear that a plaintiff can not be obliged or compelled to pay court fees and forced to litigate if he is not willing to do so on the ground that he is not in a position or unwilling to pay the court fees when his plaint comes to be rejected under clause (b) of clause (c) of Rule 11 of Order 7. A litigant can not be expected to attempt to enter the portals of the court only provided he is in a position to correctly anticipate the view of the court at the cost of having to pay additional court fee which he may either be unable or unprepared to pay regardless of whether he is prepared to litigate in that event. He may well say "I do not want to avail of the forum of court and to litigate if

any valuation is unacceptable to the court and in that case I may be permitted to abandon the attempt". One can enter a shop in the mistaken belief that the article may be within his means and return empty handed if finds that the article is in reality as valued by the shop keeper beyond his means. He can not be obliged to return empty-handed and yet to pay the price of the article. It would be grossly unfair and unjust. So also it would be unjust and unfair to accept the view canvassed by the Revenue which is wholly untenable for the reasons discussed earlier. Of course the matter would stand on a different footing where he obtains a decision or consent decree from the court for in that event there would be no question of returning from the threshold of the court room. So far as the present case is concerned, that question does not arise".

3. On the aforesaid reliance the learned advocates for the petitioners are right in contending they can not be compelled to pay court fee and they are at liberty to abandon the cause of action. Following the aforesaid decision as I am bound by the decision without expressing my independent opinion thereon and I make it clear that I have independent opinion thereon I allow these civil revision applications and quash and set aside the judgment and order of the Ld.City Civil Judge as well as the Court Fee Inspector.

4. In the result, both these revision applications succeed. Judgment and order of the Ld.City Civil Judge is quashed and set aside as the plaintiffs do not want to continue the action on the said cause of action. Rule in each revision application is made absolute accordingly. No costs.

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